IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 216 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HASMUKH PUNJABHAI PATEL OSKAR INDUS. OPP.SHODAL COLD

Appearance:

1. Criminal Appeal No. 216 of 1989

MR RM CHAUHAN, LD.APP for Petitioner No. 1

MR JS PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 01/08/2003

ORAL JUDGEMENT

1. The State of Gujarat, appellant has filed this appeal under section 377 of the Code of Criminal Procedure for enhancement of sentence against the judgment and order dated 20th January, 1989, passed by the learned J.M.F.C., Anand, in Criminal Case No.5811 of

1988. The learned Judge by his impugned judgment has held that as per section 252, 241 of the Code of Criminal Procedure (hereinafter referred to as `the Code') read with sec.21(1)(4)(c) of the Act and read with sec.92 of the Act, imposed a fine of Rs.500/- to the accused in this behalf. The learned Judge found accused guilty of an offence under sec.252 of the Code.

2. It is a prosecution case that accused is running an industry under the name and style of "Oskar Industry" at Boriyavi, Tal.Anand, and accused is an occupier of the factory. The said industry is registered under section 2(M)(1) of the Act. It is a case of the prosecution that the Inspector of Factory, Nadiad filed a complaint on 28th May, 1988, before the learned Magistrate at Anand. In the said complaint it has been stated that the Factory Inspector has visited the factory of the respondent on 28th April, 1988. At the time of his visit, it has come to the knowledge that there was an accident in the factory on 24th April, 1988. It was further stated in the complaint that at that time the worker named Navinbhai Rathod lost his right hand from wrist. He therefore made inquiry and inspection and it was learnt that there was no proper safeguard or bending to cover the roller machine as a result of which the accident in question occurred. According to complainant the aforesaid action on the part of the respondent accused is an offence under sec.24(i)(c) of the Act.

3. According to complainant the said offence is punishable under Sec.92 of the Act. Sec.92 provides general penalty for offences. It provides penalty of Rs.5,000/- in case of an accident causing seriously bodily injury. Explanation to sec.92 provides that in this section and in s.94 `serious bodily injury' means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

4. In view of the aforesaid statutory provisions a complaint was lodged before the learned Magistrate at Anand and the same was registered as Summary Case No.5811 of 1988.

5. At the time of trial, the respondent Hasmukhbhai Punjabhai Patel pleaded guilty of charges wherein his statement was recorded on 20th January, 1989. He

requested to the learned Magistrate for mercy.

6. The learned Magistrate after considering the complaint and the statement of the accused and on the ground that it was respondent first offence and after considering the plea of the guilty, the learned Magistrate was pleased to convict the accused for the aforesaid offences and sentenced the accused to pay a fine of Rs.500/- or in default undergo 30 days sentence by its judgment and order dated 20th January, 1989.

7. Being aggrieved and dissatisfied with the aforesaid order of the learned Magistrate, the State has filed this appeal under section 377 of the Cr.P.C. for enhancement of sentence.

8. Mr.R.M.Chauhan, learned APP appears on behalf of the State. He submitted that the learned Magistrate ought to have seen that the Factories Act is a social legislation which is designed to protect the interest of the workers and ensure the proper safeguards for the workers who are working in the factory. He further submitted that the learned Magistrate ought to have seen that such a lenient punishment would kill the entire spirit of legislation and would not advance the objects and interaction of the legislature and it may render its provisions mugatory which is not warranted by the Act. The learned APP further submitted that the learned Magistrate ought to have seen that under sec.92 of the Act the minimum punishment for the offence in question is a fine not less than Rs.5,000/-. He further submitted that the learned Magistrate has failed to apply the mind and has committed patent error in awarding lesser sentence than the minimum sentence prescribed under the Act. He further submitted that the learned Magistrate ought to have seen that there is no discretion vested with the court but to give minimum punishment and the legislature does not recognise the lesser punishment than what is the minimum prescribed under the Act.

9. It may be noted that in this case originally Mr.J.S.Patel, learned advocate appearing on behalf of the respondent, however, after his death notice has been served to the respondent but he has not remained present in this behalf.

10. I have considered the facts and circumstances of the case. Firstly looking to the offence involved in this case wherein young man has lost his hand upto wrist level. The learned Magistrate ought not to have given lesser punishment that what was prescribed under the Act.

He had no discretion to grant lesser punishment in this behalf. In fact while awarding lesser punishment, the learned Magistrate has not given any adequate reasons as to why the learned Magistrate has given lesser punishment then the punishment prescribed under the Act.

11. As regards punishment is concerned, the learned APP has stated that the fine of Rs.500/- imposed by the learned Magistrate is unduly lenient and in case of factories the court should not take lenient view in this behalf.

12. Sec.92 of the Act reads as under:

"92.General penalty for offences: Save as is otherwise expressly provided in this Act and subject to the provisions of s.93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued:

Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under s.87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury.

Explanation:- In this section and in s.94 `serious bodily injury' means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or

foot".

13. In my view, therefore, the order of the learned Judge imposing of Rs.500/- fine on the respondent is clearly illegal and is breach of statutory provisions of the Act and are liable to be set aside. In my view the Factories Act 1948 is an act to consolidate and amend the law regulating labour in factories. Section 2 provides definition of certain words used in the Act. Secs.4 to 7 provides the Government is empowered to regulate and control working of the factories. Chapter II relates to the Inspecting Staff. Chapter III relates to health. Chapter IV provides safety of the employees. Chapter V provides for welfare and facilities. Chapter VI provides working hours of adults. Chapter provides employment of young persons. Chapter VIII provides for annual leave with wages. Chapter IX provides for special exemption. Chapter X provides for penalties and procedure.

14. It may be noted that the offence alleged against the respondent are the offences regulating labour work in factories. It affects the working class and the parliament has enacted this act with almost anxiety to regulate the working of these classes in the factory.

15. The learned APP for the appellant has relied on the judgment of this Court in the case of State Vs. Jamnadas Vasanji reported in 1962(3) GLR page 136. In that case this Court observed after relying upon the judgment of the Hon'ble Supreme Court as under:

"I, however, find that the sentence of fine imposed by the learned Magistrate is unduly lenient. As pointed out by Gajendragadkar J, in a judgment delivered by him on 3rd September, 1954, in Criminal Revision Application No.803 of 1954, "in passing orders of sentence for breach of the conditions laid down by the Factories Act, Criminal Courts must bear in mind the beneficient purposes which the provisions of the Act are intended to serve". In my opinion the sentence of fine of Rs.10/- imposed by the learned Magistrate is not in consonance with these observations of Gajendragadkar J. I, therefore, enhance the sentence of fine to Rs.30/- and direct that in default of payment, the accused shall suffer simple imprisonment for ten days."

15.A "It cannot be gainsaid that Rule 161 of the Rules provides for certain safety measures. Provisions for safety measures are made in Chapter IV of the

Act. The rules appear to have been made under Chapter IV of the Act. Section 62 thereof makes the offence resulting in contravention of provisions relating to safety measures to be of an aggravated kind. In that view of the matter, a serious offence can be said to have been committed by the respondent-accused by exposing the workmen of his factory to unsafe working conditions. Not to fit the plant or the machinery of the factory with the necessary safety valve when it was working with the pressure in excess of the atmospheric pressure might have resulted in saving a few bucks on the part of the factory owner, that is, the respondent-accused herein. By this adopting such undue economic drive, the respondent-accused has certainly exposed the workmen of his factory to certain occupational hazards. They might be required to work out of compulsion under such hazardous and unsafe working conditions prevalent in the factory. They have to work for their bread. They might have been left with no choice or alternative but to work in such factories even at the peril of hazards to their persons or even to their lives. Their exposure to such unsafe working conditions in such factories can be said to be their exploitation by owners of such factories. I think the factory owner guilty of contravention of safety provision has to be dealt with severely and seriously even on his pleading guilty to the charge. He cannot be permitted to profiter by by-passing the safety measures. To let him do so will be detrimental to the interests of the workmen and will tantamount to frustrating the objects of Chapter IV of the Act. I think the learned trial Magistrate was not justified in dealing with the respondent-accused with undue leniency in the matter of sentence even on his pleading guilty to the offence with which he was charged."

{Re: para 15A judgment of this Court in the case of State of Gujarat vs. Sandeep Bhandari reported in 1997(77) Factories & Labour Reports page 105}

CONCLUSION:

16. It may be noted that in this case the worker has lost right hand from wrist due to the accident occurred in the factory. The owner and occupier of the factory did not take precaution regarding safety of the worker. It may be noted that the object of Factories Act is to

frame the benefits relating to employees health, safety, security, welfare, proper working hours, leave and other benefits.

{Re: judgment of the Apex Court in the case of Nagpur Electric Light & Power Co.Ltd Vs. The Regional Director, Employees' State Insurance Corporation reported in AIR 1967 SC 1364}

16.1 The Government has not only enacted the act but the Government has also framed rules in exercise of the powers conferred by the Factories Act also and that rules also provide details regarding working of the factory. The rules also provides health and safety policy of the factory, cleanliness of walls, ventilation and temperature, cooling of water, safety of the workers particularly Sec.54 which provides general safety has to be maintained by the factory owner.

16.2 I have also considered the observations of the Apex Court delivered on 3rd September, 1954, in Criminal Revision Application No.803/54 which has been acquitted by this Court of the judgment reported in 1962(3) GLR 136. In my view the learned Magistrate has not properly appreciated the beneficient purposes which the provisions of the Act are intended to serve. He has completely ignored the said provisions in this behalf.

16.3 In my view in this case this Court observed that the safety of the workers are of the paramount interest and if the factory owner failed and neglect to take any steps and thereby life of the worker is in danger and thereby the owner or occupier of the factory committed an offence, the court should not take lenient view of the matter but it must take serious view of the matter in view of the decision which I have quoted earlier in this behalf. In view of the same I am of the view that the learned Magistrate has taken very lenient view of the matter by imposing Rs.500/- though the minimum fine of Rs.5,000/- in this behalf.

16.4 It may also be noted that in this case if we examine sec.92 of the Act, originally imprisonment for term was three months. However the legislature by its amending act by sec.30 w.e.f. 1.12.87 increased the sentence for two years and originally fine of Rs.2,000/has been increased by amending act by sec.30 w.e.f. 1.12.87 increased to Rs.1.00 (Rupees One lakh). It was further provided that after the contravention is continued after conviction with a further fine which was originally Rs.75/- has been increased to Rs.1,000/- by

amending Act 20 of 1987, sec.30 w.e.f. 1.12.1987.

16.5 All these three amendments clearly suggest that even the legislature has considered the fact that the factories act is a labour welfare legislature and therefore the original fine imposed was too meagre amount but with a view to see that adequate punishment is given the Magistrate has increased the amount. In my view, the learned Magistrate has not considered the legislative amendment in this behalf and imposed too lenient punishment to the owner of the factory who himself admitted offence in this behalf.

16.6 It may be noted that Sec.94 explanation provides definition of serious bodily injury and in this case also from the nature of accident it clearly reveals that the petitioner has suffered serious bodily injury in this behalf.

16.7 It may be noted that in this case the State has filed appeal under Section 377 of the Cr.P.C which provides appeal by the State Government against sentence only on the ground that sentence imposed by the learned Magistrate is inadequate. I have considered the facts and circumstances of the case. I am of the view that the learned Magistrate has imposed very inadequate sentence in this behalf and in view of the same the State Government is perfectly justified in filing the appeal. I, therefore, increased the fine imposed upon the accused in this behalf.

16.8 In the judgment of this Court in the case of State of Gujarat Vs. Sandeep Bhandari (supra), the Court found that the plant was not fitted with the necessary safety valve in contravention of the aforesaid statutory provisions and in view of that fine of Rs.50,000/imposed. Here in this case the worker has lost one part of hand and, therefore, I imposed fine of Rs.75,000/-.

17. In the result, this appeal is allowed. The judgment and order dated 20th January, 1989, passed by the learned Magistrate, Anand, in Criminal Case No.5811 of 1988 is modified to the extent that the fine imposed by the learned Magistrate on the accused of Rs.500/- is ordered to be enhanced to Rs.75,000/- (Rupees Seventy Five Thousand only). The respondent shall pay the fine within one month from the date of receipt of this judgment by him.

17.A Before I part with this judgment, I may also observe that out of Rs.75,000/- which may be recovered

from the respondent-accused, the State will pay Rs.50,000/- to the worker Navinbhai Rathod who had lost part of hand in this behalf and Rs.25,000/- be retained by the State. Copy of the judgment may be sent to Factory Inspector, Nadiad, accused Hasmuk Punjabhai Patel and worker Navinbhai Rathod also.

(K.M. Mehta, J.)

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